

BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D. C. 20554

ORIGINAL  
FILE

In re

Amendment of Parts 1, 2 and 21  
of the Commission's Rules  
Governing Use of the  
Frequencies in the 2.1 and  
2.5 GHz Bands

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)  
) PR Docket No. 92-80  
) RM-7909  
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To: The Commission

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JUN 29 1992

Federal Communications Commission  
Office of the Secretary

JOINT COMMENTS

ARIZONA BOARD OF REGENTS FOR ARIZONA STATE UNIVERSITY  
BOARD OF TRUSTEES, CONNECTICUT COMMUNITY-TECHNICAL COLLEGES  
BOSTON CATHOLIC TELEVISION CENTER, INC.  
CATHOLIC DIOCESE OF YOUNGSTOWN, OHIO  
CONNECTICUT PUBLIC BROADCASTING, INC.  
DUTCHESS COMMUNITY COLLEGE  
FIFTEEN TELECOMMUNICATIONS, INC.  
MID-SOUTH PUBLIC COMMUNICATIONS FOUNDATION  
NEW JERSEY PUBLIC BROADCASTING AUTHORITY  
OREGON COMMISSION ON PUBLIC BROADCASTING  
WHYY, INC.  
WJCT, INC.

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FEDERAL CONSTITUTIONAL COMMISSION  
OFFICE OF THE SECRETARY

Schwartz, Woods & Miller, on behalf of Arizona Board of Regents for Arizona State University; Board of Trustees, Connecticut Community-Technical Colleges; Boston Catholic Television Center, Inc.; Catholic Diocese of Youngstown, Ohio; Connecticut Public Broadcasting, Inc.; Dutchess Community College; Fifteen Telecommunications, Inc.; Mid-South Public Communications Foundation; New Jersey Public Broadcasting Authority; Oregon Commission on Public Broadcasting; WHYY, Inc.; and WJCT, Inc. (referred to herein as "the Joint Parties"), files these comments concerning the Notice of Proposed Rulemaking (NPRM), FCC 92-173, released May 8, 1992, in the above-referenced proceeding.

2. Arizona Board of Regents for Arizona State University (ASU), licensee of public television Station KAET-TV, has operated its ITFS system since 1982, serving the greater Phoenix metropolitan area with three transmitters serving students

located in a number of satellite campuses, government buildings and industrial sites.

3. The Board of Trustees of the Connecticut Community-Technical Colleges is the permittee of three ITFS stations which will operate in conjunction with stations licensed to Connecticut Public Broadcasting, Inc. The Community-Technical Colleges currently utilize certain CPBI ITFS stations for distribution of its services, but quickly reached capacity, and filed for its own stations. In addition to serving the seventeen colleges in the Community-Technical network, live-interactive instructional programming originating at the Connecticut Health Center in Farmington will be distributed to hospitals throughout the state.

4. Boston Catholic Television Center, Inc. (BCTV), represents one of the earliest ITFS systems, first authorized in 1967. Sponsored by the Archdiocese of Boston, Massachusetts, BCTV serves the educational needs of the Archdiocese, feeds BCTV-produced and acquired programming to cable television systems for school and general public consumption, and provides transmission services and channel capacity for other area educational institutions, including Boston University.

5. The Catholic Diocese of Youngstown, Ohio operates a single-channel ITFS system, which it has recently been authorized to expand to a four-channel system. The programming service provided by the Diocese is received directly at several hospitals, and through cable to 15 schools with approximately 3500 students and 340,000 households.

6. Connecticut Public Broadcasting, Inc. (CPBI) is in the process of constructing a state-wide system which will provide instructional services to every school district in the state. CPBI first entered the ITFS field in a cooperative venture with the Connecticut Community-Technical Colleges, and subsequently was selected by the state to construct the state-wide system. As transmitters in the system have been activated, additional requirements of a variety of state agencies have been discovered, and projects are underway with various hospitals, the state's Department of Corrections, the Department of Children and Youth Services and the Department of Mental Retardation, the Commission on Fire Safety and Control and the Department of Public Safety . The current project has been underway for almost twelve years, and will not be complete for approximately an additional three years.

7. Dutchess Community College (DCC), sponsored by the County of Dutchess, is part of the State University of New York system of higher education and has operated its ITFS system for over a year. From its campus at Poughkeepsie, DCC uses ITFS to provide college credit courses and in-service training programs to off-campus extension sites. These sites include remote classrooms, the College's environmental center, and selected area business and industry locations.

8. Fifteen Telecommunications, Inc. (Fifteen) the licensee of public television Station WKPC-TV, Louisville, Kentucky, is permittee of ITFS Station WHR769 in Louisville. Through this ITFS facility, Fifteen expects to offer a variety of educational and informational services which will complement the

public television services currently provided through Station WKPC-TV. Fifteen's planned ITFS service is a natural outgrowth of its mission to furnish public telecommunications services to Louisville and its environs.

9. Similarly, the Mid-South Public Communications Foundation (Foundation) is the licensee of Stations WKNO-TV-FM, Memphis, Tennessee, and public Stations WJTR(FM), Jackson, Tennessee and WKNA(FM), Senatobia, Mississippi. The Foundation is permittee of ITFS Station WHR533, Memphis, and is exploring the development of ITFS service, either alone or in partnership with other interested area ITFS participants.

10. New Jersey Public Broadcasting Authority (NJPBA) is the state agency responsible for serving the public telecommunications needs of New Jersey. NJPBA, which provides public television and radio service to the State of New Jersey, has been an active participant in ITFS. NJPBA has begun to implement an ITFS network through partial activation of Stations WHR821, Montclair, WHR822, New Brunswick, and WLX250, Trenton. (NJPBA recently was granted a permit for Station WLX566, Cherry Hill, New Jersey.) This system currently offers high school and college level credit courses as well as teacher in-service programs in cooperation with both the Federal Star Schools program and the New Jersey Institute of Technology. NJPBA's experience with ITFS demonstrates both the great promise of the service for providing important educational services as well as the substantial time and effort required to implement ITFS systems.

11. The State of Oregon Acting By and Through The Oregon Commission on Public Broadcasting (OPB) has been authorized use of four ITFS channels at Portland, Oregon. One channel was activated in 1986, two channels were activated in 1988, and these channels are in use for instructional services at a variety of institutions. The fourth channel is expected to be activated shortly in conjunction with ED-NET, the State of Oregon's new ambitious statewide telecommunications network. ED-NET has been designed with the participation of OPB to provide a variety of instructional services by a number of different delivery techniques to further the causes of distance learning and integration of the State's information services system for the benefit of institutions of higher learning, public and private schools, libraries, business and industry, governmental agencies and institutions, and non-profit community service organizations.

12. WHYY, Inc. operates public television and radio stations serving Philadelphia and the state of Delaware. It has recently been granted a license for an ITFS system in Wilmington, Delaware, which it plans to activate in cooperation with the University of Delaware. It also has applications pending for ITFS facilities in Philadelphia.

13. WJCT, Inc. is the licensee of public stations WJCT-FM-TV and of MMDS Station WHT-675, Jacksonville, Florida. WJCT also has a pending application for ITFS channels, grant of which will permit assignment of its MMDS station to a commercial operator. WJCT will operate its station as part of an informal ITFS consortium to serve the greater Jacksonville area organized in

conjunction with the Duval County School System and several area institutions of higher education.

14. Collectively, the Joint Parties have invested substantial public resources in the effort to develop ITFS in order to provide educational and informational services to their respective constituents. ITFS is a valuable public resource which should and must be properly protected in order to fulfill its goals. The Joint Parties accordingly are vitally concerned that the Commission adopt adequate protection for ITFS operations while encouraging the development of commercial MMDS operations.

15. In the NPRM, the Commission has proposed changes in the Multipoint Distribution Service (MDS) rules to further encourage the development of "wireless cable" systems. These rules will necessarily affect the operation and development of Instructional Television Fixed Service (ITFS) stations operated or proposed to be operated by the Joint Parties. The Joint Parties take no position on the proposals for the processing of MDS applications. These comments are limited to the Joint Parties' concerns that protection of ITFS systems have not been adequately considered in the rule changes proposed for the MDS service.

16. The Commission has made proposals for protection of ITFS systems from MMDS operations which would include 14 days' advance notice to ITFS licensees of planned activation of MMDS systems. ITFS licensees would have the right to request cessation of an interfering MDS operator's station during a 30-day period. An MDS licensee failing to comply with such a request would be subject to fines or license revocation. The MDS licensee could

resume operations only after testing methods to eliminate the interference, such as reduction of power, use of a directional transmitting antenna, or improvement of ITFS receiving equipment. ITFS licensees would be required to cooperate in all tests and measurements which the MDS licensee wants to conduct in order to maintain the right to demand the cessation of operation of an MDS station. Absent cooperation, the Commission would utilize measurements based on an "equivalent antenna in the immediate area of the ITFS receive antenna." The ITFS operator would have the initial burden to demonstrate interference, which the MDS operator would have to disprove in order to continue operation (NPRM, para. 15 and fn. 29).

17. The Joint Parties generally support these protections proposed by the Commission for ITFS operators, and agree that the responsibilities assigned to ITFS operators are reasonable. However, the Commission has failed to take into account the nature of ITFS licensees and the technical facts of microwave broadcast operation in the 2 GHz band in the formulation of the time periods which would be included in these new rules.

18. First, the 14-day advance notice requirement proposed is far too short, and does not provide sufficient time to assure that affected ITFS interests will be able to monitor MDS activations. Especially where an ITFS licensee is a school system, it may receive the notice while key administrative personnel are on vacation. Wireless cable operators should reasonably be required to give a 90-day notice to ITFS licensees of their intention to activate, so that appropriate arrangements for monitoring and



evaluation can be made during vacation periods. Without a longer notice period, the purpose of the Commission's proposed technical protection of ITFS will be seriously undermined.

19. Secondly, while the Commission proposes that MMDS licensees would be required to shut down after an interference complaint is made by an ITFS licensee, the shutdown period would only extend for the first 30 days of operation regardless of whether or not there was an ongoing interference problem. Moreover, if no ITFS licensee complained during the first 30 days, the MDS license would become unconditional, although an interference problem resulting from the MMDS operation might still be subject to Commission investigation and revocation process. It should also be stressed that receive sites which are protected from interfering signals by blocking foliage during spring and summer months may be exposed to destructive interference and become inoperable during Fall and Winter. The Joint Parties therefore urge the Commission to make the conditional MDS operation period a full year. The 30-day period proposed by the Commission is far too little time for ITFS licensees whose operations would be adversely affected to experience interference and to determine that a nearby MMDS station is causing the interference.

20. The Commission also should clarify the meaning of Section 21.902(c)(3) of the rules and footnote 29 of the NPRM which state that "all ITFS registered receive sites in existence at the time the MDS transmitter is licensed would be given actual protection in accordance with 47 C.F.R. Section 74.903(a)(2)." ITFS system operators often do not install all receive sites listed in

an application (and presumably "registered") at the same time, and placement of receive locations often changes. An MMDS licensee should be required to protect all receive sites which have been listed in an ITFS application, irrespective of the date of their actual installation. Such a requirement would be entirely consonant with interference protection requirements applicable to various services (for example, broadcast and common carrier), which entail protection of proposed as well as activated facilities. If the Commission wants to place time limits on the construction of ITFS receive sites or rules regarding extensions of those time limits, it should propose such rules and permit notice and comment, either at the same time as or prior to making any change in the rules governing protection of ITFS operations by MMDS licensees.

21. The Commission also proposes to permit MDS licensees to utilize signal booster stations without the present requirement of individual licensing. It is unclear how this proposal would be implemented, since no specific rules were included in Appendix B to the NPRM. It is also unclear whether the rule change would apply as well to ITFS licensees. The Joint Parties do not object to this change in licensing procedure for MDS booster stations so long as boosters are located within the existing coverage area of a station, and are not used to extend the coverage area. Accordingly, adequate information must be filed with the Commission and public notice given of the installation of boosters, so that licensees can determine whether a booster installation is responsible for interference problems. The Joint Parties

also urge the Commission to adopt equivalent rules for the MDS and ITFS service in this regard.

22. Specifically, the Joint Parties propose that MDS licensees utilize a revised Form 494A to notify the Commission that a booster has been installed. The notification would include the location of the booster and information on the antenna installed, radiation center above ground and power. The Commission should place the filing of such Forms 494A on public notice in the same manner as notifications of construction are presently placed on public notice.<sup>1/</sup> The notifications would be automatically effective -- no staff time would be required for analysis of the filings. ITFS licensee initiated boosters could utilize FCC Form 330, Sections I and VII, and that information could be placed on public notice under "Broadcast Actions." Both MMDS and ITFS licensees would be required to maintain copies of their booster notification filings with their posted licenses for inspection by the FCC.

23. The Joint Parties applaud the Commission's effort to revise its MDS application processing procedures in order to streamline the process and coordinate this licensing with ITFS licensing. The lack of such coordination has injected confusion, complication and delay into the MMDS/ITFS licensing process. The Joint Parties urge that licensing of both MDS and ITFS services be centered in the same Bureau, so as to eliminate any need for intra-

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<sup>1/</sup> See Public Notice No. 1266, DA87-1696, 64 RR2d 471 (issued January 15, 1988) for MMDS filing procedures regarding Form 494A completion notices.

Bureau coordination. In the Joint Parties view, the Mass Media Bureau is the best choice for the processing of both MDS and ITFS services. This Bureau has overcome previous backlog problems in both Low Power TV and the FM radio services. The Commission appropriately expanded the staff in both of these areas in order to deal with previous processing backlogs, and it could do so again if it were to decide that processing of MDS applications truly was a priority worthy of additional personnel and budget resources. The Mass Media Bureau also has special expertise regarding ITFS matters, and in particular has the particular engineering capabilities required for ITFS application processing. In any event, the Commission should be careful that decisions made to process MDS applications not interfere with the processing of ITFS applications, where far too many delays have already been encountered.

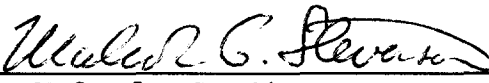
24. Finally, the Joint Parties wholeheartedly agree that the creation of a consolidated data base comprised of all licensed and pending MDS, ITFS and H-channel operations would be a necessary first step toward the processing of MDS applications. However, the Commission has proposed only to place the MDS portion of the data base out for public comment (NPRM, para. 22). It should be stressed that the interference issue lies at the heart of the relationship between MDS and ITFS operations. In this regard, the incompleteness of the Commission's current data base has created problems for MDS and ITFS applicants alike in trying to determine the status of ITFS and MDS facilities. Accordingly, the Joint Parties strongly urge that a complete data base, including MDS, ITFS and H-Channel licensees, permittees and applicants,

should be issued for public comment; otherwise, numerous quarrels will arise regarding the true nature of all facilities in question in potential interference disputes. Such a complete data base provides the best means of assuring the licensing of both MDS and ITFS facilities in a fair and efficient manner.

Respectfully submitted,

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